

1949.

File No. Ware Houses II/49 (R)
Legal Department



Dr.
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Subject:—

B BRANCH

Rules under the Bombay Warehouses Act,

1947.

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P-4

File No. Ware Houses II/49 (R)
Gen. 194

79B

Legal Department.

Revised draft rules are sent herewith. The revised rules have been divided into 5 parts and have been arranged in a logical order.

2. Rule 2. The definitions of the expressions "weigher" "sampler" and "classification" are not necessary in view of the provision made in sub-section (1) of section 23 of the Bombay Warehouse Act, 1947, and have therefore been deleted.

3. Revised rule 11: This corresponds to R.D. draft rules 45 and 46 which have been combined.

4. Revised rule 12: This corresponds to R.D. draft rule 3 which has been recast. The provision in the R.D. draft rule that goods can be kept for one year only as ultra vires the Act and has therefore been omitted.

5. Revised rule 21: This corresponds to R.D. rules 28 and 29 which have been combined.

6. Revised rule 23: This corresponds to R.D. rule 33. There is no legal objection to making such a rule, but the portion in sub-rule (3) of the R.D. rule 33 which purports to refer disputes regarding quality grading and weight to the prescribed authority is against the provision in sub-section (3) of section 23 of the Act and has therefore been deleted.

7. Revised rule 27: This corresponds to R.D. rule 15. Sub-rule (3) of the R.D. rule 15 prescribes an appeal to the Collector against an order refusing the grant of a license. Unless the statute itself substantively provides for appeals, it would not be proper to introduce such right by rule. The provision regarding appeal has therefore been omitted from the revised rule. Similar provision has been omitted from the revised rule 32 corresponding to R.D. rule 20.

8. Revised rule 29: R.D. will no doubt prescribe a suitable form of certificates to be issued by weighers, samplers and classifiers. This form may be added as Form No 10 at the end of the rules.

9. Revised rule 33: Corresponds to R.D. draft rule 31. Sub-section (3) of section 23 of the Act empowers the prescribed authority to appoint a Board of Arbitrators to decide complaints against weighers, samplers and classifiers or warehousemen. The proposed rule requires the parties in dispute to appoint an arbitrator each. There is no objection to having such a rule, but section 23(3) does not contemplate that. It gives entire discretion to the prescribed authority to appoint the Board.

10. R.D. rules 24 and 25: These have been combined into revised ^{rule} 37.

11. R.D. rule 34: The R.D. draft is restricted to licenses granted to warehousemen. Section 11 relates to return of licenses granted to warehousemen and section 25 makes similar provision in respect of licenses granted to weighers, samplers and classifiers. The rule has therefore been recast to cover both these classes of cases (vide revised rule 36).

12. R.D. rule 35: ~~R.D. rule 35~~ The draft rule requires a notice to be exhibited stating the conditions under which goods shall be insured. The purpose of this rule is not quite clear. Sub-section 19 requires a warehouseman to insure all the goods which are stored in the warehouse. The provision for insurance and recovery of charges thereof has already been made in revised rules 19 and 20. R.D. should ^{be} please clarify whether what is intended is that the schedule of rates of insurance should be exhibited at warehouses.

S.D.Sd.:-

Additional Secretary to Government.

U.R. to R.D. No. 61., dated the 4th January 1949.

VGP.

4-6-56.

Legal Department.

The requisites draft amendments are sent herewith.

2. The first suggestion is to provide for the issue of non-negotiable receipts. As stands in para. 2 of Revenue Department office note at page 366 there is no objection to having such a provision in the rules (please see new rule 13A). Consequently amendment has also been made in the revised form of the receipt (Form No. 6). A definition of the expression "Non-negotiable receipt" has also been added in the rules (vide clause)1.

3. The next proposal is in regard to draft rule 7. The Reserve Bank has suggested that instead of insisting on furnishing security in cash or Government securities provision should also be made for recognition of a bond with two sureties and an undertaking to maintain certain assets. For this purpose rule 7 may be revised as in the accompanying amendment. As regards the maintenance of assets, provision has already been made in rule 5(1). However, that condition may be amended so as to provide for furnishing moveable or immovable assets (vide clause 2).

4. The next proposal is as regards the form of the receipt (form No. 6). The Revenue Department has not specifically considered the feasibility of all the conditions appended to Form No.3 of the Reserve Bank draft. It is presumed all the conditions in the Reserve Bank form are to be imported.

5. Rule 15 of the Bombay rules requires a depositor to supply information about ~~ref~~ transfer of a receipt. The Bank suggests that the transferee should communicate such matters and not the transferrer. No amendment in this respect however appears necessary in view of the definition of the expression "depositor" in section 2(b) of the Bombay Warehouses Act, 1947, which includes also the transferee of a receipt.

6. The next suggestion is to make provision requiring the depositor to give notice of damage if any, within 72 hours of his coming to know of it or after having taken delivery, and requiring the warehousemen to note down part to delivery on negotiable receipt.

These have been Provided in new Rules 21A & 21B.

7. The last suggestion of the Reserve Bank is the penalty for breach of the rules. As regards this the view by Revenue Department that the penalty prescribed by sections 30 and 31 will be applicable is correct.

8. The last point is to provide for the two matters referred to in Secretary, R.D.'s note dated the 11th ^{January 1949} in respect of each place pages 263-264 ante. The first is that in respect of each place of business of a warehouseman there should be a ^{se} separate license and the licence or its duplicate should be posted in both the principal and subsidiary places of business for the information of customers and inspection by the prescribed authority. Under section 3 of the Act a license is required for carrying on the business of a warehouseman or representing or holding oneself out as a warehouseman or. If a person or firm carries on the business of a warehouseman and has more than one warehouseman it would not be legally feasible to require ^{it to take out} for carrying on the business and not in respect of each place of business. ^{As the license is required} As regards the posting of duplicates of licences ^{under section 129} reissued only when the originals are lost or destroyed. It would not therefore be correct to issue duplicate licences for exhibition ⁱⁿ them in the various warehouses or place other than the principal place of business.

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the Act duplicates of licences

9. The other point raised by Secretary R.D. in his note at page 264 ante is that where a license is granted or renewed for a period beyond 31st December following the date of the application the fee should be recovered in advance and computed on the annual basis for each year or fraction thereof. As regards payment of licence fee under rule 3(2) it is required to be sent along with the application for original licence or for renewal thereof. Consequently no further provision for recovering it in advance is necessary. The other part of Secretary R.D.'s proposal is not however clear. The other part of Secretary 4 prescribes the annual fee and rule 6 provides that a licence shall be valid with effect from the date on which it is granted for the period ending 31st December following. Under rule 3(2) the application will be accompanied by the fee prescribed in rule 4 that is annual

23

fee. If it is intended that when an application is made in the midst of a year only a proportionate fee should be recovered, it will cause administrative difficulties. This suggestion does not therefore appear feasible.

S.D.Sd.

Additional Secretary to Government.

U.R. to R.D. No. 3289., dated the 25th March 1949.

VGP.

4-6-56.